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ADJUDICATIVE AND DISPUTE RESOLUTION EXPERIENCE

Judge, Department of Transportation Board of Contract Appeals, 1980-1997; appointed Deputy Chief Judge in 1987; retired 1997.

A federal trial judge, conducting full trials of disputes arising out of contracts of the U.S. Department of Transportation (including the Federal Highway Administration, Coast Guard, Federal Aviation Administration, Federal Railroad Administration), Department of Justice, International Trade Commission, and National Science Foundation. A substantial majority of these were construction contracts, including highway, marine, and vertical construction. These cases also often involved other areas of law: bankruptcy, tort, agency, taxation, suretyship. Authored approximately 275 published opinions adjudicating this litigation.

Dispute Review Boards:

Orlando, Florida—SunRail Project:

Appointed in August 2011 as DRB Member pursuant to nomination by the Owner, Florida Department of Transportation, and approval by the Contractor, Archer-Western/Railworks JV. The Contract is for the design, construction, maintenance of a commuter rail system in Orlando on 62 miles of mainline track being purchased by FDOT from CSX. The work includes for the double-tracking plus construction of a bridge over the St. Johns River and construction of new stations and installation of grade crossing and signaling. CSX and Amtrak service will continue during the work. The Construction Manager is HNTB. Project work will continue into 2013.

Alexandria, Virginia—I-95/I-495/Telegraph Road Interchange:

Appointed in 2008 to Chair the DRB on this \$236 million contract for construction of a major interchange in connection with the Woodrow Wilson Bridge Project. The Owner is Virginia Department of Transportation. VDOT's project manager is Potomac Crossing Consultants, a joint venture primarily comprised of three firms, Parsons-Brinckerhoff, URS, and Rummel, Klepper and Kahl, LLP. VDOT's Section Design Consultant is Dewberry and Davis. The contractor is a joint venture of Corman Construction and Kiewit Southern. Project work is to continue through 2013.

Boston, Massachusetts—Central Artery/Tunnel Project (“Big Dig”):

(1) Chaired Dispute Review Board for Contract C22A2 for acquisition and installation of the overall Integrated Project Control System. The Owner was Massachusetts Turnpike Authority, acting through Bechtel/Parsons-Brinckerhoff, construction manager. The Contractor was Honeywell Technology Solutions, Inc. The Contract work interfaced with 41 other major construction contracts. Initial contract value was \$103 million with claims eventually approximately \$180 million, which were resolved. The Contract is now closed.

(2) Chair Dispute Review Board for Contract C11A1. Selected in 2005 to be successor Chairman of the third DRB to sit on Contract C11A1. The Owner is Massachusetts

Department of Transportation, successor to the Massachusetts Turnpike Authority. Bechtel/Parsons-Brinckerhoff was the Owner's construction manager. The Contractor is a joint venture, Perini-Kiewit-Cashman. The current Contract value is about \$520 million. This DRB has been holding extensive hearings on several hundred claim items aggregating an additional \$145 million. The Contract C11A1 work, substantially completed in August, 2003, was the construction of approximately 2,000 feet of highway vehicular tunnel (northbound I-93, the "Mainline Tunnel") under Atlantic Avenue near South Station, and renovation of a century-old rapid transit station on the MBTA Red Line which ran perpendicular to and above the Mainline tunnel. The Red Line Station renovation included construction of a separate Transitway tunnel and station to accommodate trolley busses (MBTA Silver Line). The Contract work included utility relocation, which on other CA/T projects was accomplished by predecessor contracts, and site restoration. This project is unique in that for some, but not all, claims, the DRB will function as an arbitration panel, issuing binding awards. Additional claims are still being filed and duration is expected to continue through the end of 2011.

Jacksonville, Florida—SR9A/I-295/I-95/US-1 Interchange Project:

Appointed in May, 2004, as Chairman of successor Dispute Review Board, by agreement on behalf of both parties, for an ongoing major highway construction project. The Owner is Florida Department of Transportation; the Contractor is AMEC Civil LLC. The DRB held several hearings and made recommendations on some 30 claims. The contract is now closed. PTG Construction Services Company, a Parsons Transportation Group affiliate, working together with JEA Construction Engineering Services, Inc., was the FDOT construction manager.

St. Augustine, Florida—Bridge of Lions Replacement Project:

Appointed as member pursuant to nomination by the Contractor, Tidewater Skanska, Inc., and approval by the Owner, Florida Department of Transportation. Project work began in 2005 and was completed in December, 2010. The Project cost was approximately \$80 million.

URS Construction Services was the FDOT construction manager, working with Target Engineering Group and DFA Communications. Two hearings were held and the DRB recommendations were accepted. Contract is now closed.

Pensacola, Florida—Escambia Bay I-10 Causeway Replacement:

Appointed as member pursuant to nomination by the Contractor, Tidewater Skanska, Inc./Flatiron Construction, Inc., JV, and approval by the Owner, Florida Department of Transportation. This was a Design-Build Project. Project duration was 2005 through early 2008. The work was urgent construction of two three-lane causeways for Interstate 10 across Pensacola Bay to replace two causeways which had been damaged by a hurricane. Project cost was approximately \$100 million, with a \$10 million early completion bonus (which was attained). The DRB held three hearings on claims and the recommendations were accepted. Contract is now closed.

Suncoast Parkway Toll Facilities (Florida):

Nominated in 2005 by Owner Florida Turnpike Enterprise and approved by contractor Archer-Western as successor member to consider post-completion claims. After several hearings and recommendations, the parties resolved all claims.

Florida Department of Transportation District 2 Regional DRB:

This is a regional DRB for small contracts which do not involve sufficient dollars to justify a regular DRB. It only convenes when there is a dispute. Member 2010 and 2011 calendar years.

New York City East Side Access Project; New York MTA Capital Construction:

On roster of qualified Dispute Review Board Chairpersons/Members.

Trans-Hudson Express Tunnel (NJ Transit/Port Authority of NY & NJ): On roster of qualified Dispute Review Board Chairpersons, before New Jersey cancelled the Project.

Independent Dispute Resolution Neutral, 1991-present.

Serving as an arbitrator, mediator or minitrial neutral in ADR proceedings arising out of contracts, some involving the federal government as a party and others wholly private sector disputes. Virtually all have been construction, construction-related, or ship building/repair.

American Arbitration Association

Arbitrator, Construction Arbitration Panel, 1991-present, and Panel of Neutrals for Large and Complex Cases, 2003-present. Serving as arbitrator for private sector disputes arising out of construction and construction-related contracts.

Mediator, Panel of Mediators, 2001-2007. Mediating private and public sector disputes arising out of construction and construction-related contracts.

Regulatory Negotiation. Served as facilitator in the U.S. Department of Transportation Regulatory Negotiation proceeding in which representatives of state governments, of federal agencies, and of private groups that aid the disabled, jointly drafted by consensus the Uniform Handicapped Parking Regulations.

Seminar Leader, George Washington University School of Law, Government Contracts Program, 1995-1999.

Conducting two-day seminars on *Alternatives to Litigation for Resolving Disputes*, using a two-volume manual which I co-authored with another retired judge. This seminar was given both in sessions at which attendance was open to the public, and on-site in closed sessions to various clients.

Author on Dispute Resolution Subjects:

The ADR Deskbook: Co-authored a two volume reference manual on all modes of ADR, including, *inter alia*, coverage of dispute review boards, partnering, mediation, arbitration, and minitrials.

“Dispute Review Boards,” published in *ADR Report* (Pike & Fischer, Inc.), July 22, 1998.

“American Institute of Architects Revises Form A-201 Provisions Affecting Dispute Resolution,” *ADR Report* (Pike & Fischer, Inc.), December 10 & 24, 1997.

“ADR and Ethics Considerations for Lawyers — ABA Rules Interpreted by the States,” *ADR Report* (Pike & Fischer, Inc.), September 17, 1997.

OTHER LEGAL EXPERIENCE

National Academy of Sciences, Federal Construction Council, Committee on Construction Procurement Policy. Member, 1976-1979; Chairman, 1977-1979.

This Committee was created to review federal agency construction contracting procedures and recommend changes to make the process more efficient.

Seminar Leader, ESI International/George Washington University School of Law, Government Contracts Program, 1995-2003.

Conducted seminars on *Understanding the Federal Acquisition Regulation*, for which I wrote and prepared the materials. This seminar was given both in sessions at which attendance was open to the public, and on-site in closed sessions to various clients. (1995-1999).

Conducts a series of four-day seminars on *Federal Appropriation Law* for the Navy at various locations through the Eastern United States (2001-present)

Conducted a two-day seminar in Panama for the Panama Canal Commission on *Architect-Engineer Selection Procedures*.

Construction Contract Consultant, United States Postal Service, 1998-1999.

As subcontractor to ESI International, assisted the USPS in preparing a new *Design and Construction Handbook* setting forth the procedures for contracting and then conducted 12 training sessions at regional offices to apprise experienced contract personnel of the new procedures they were to apply.

Head, Contracts Branch, Headquarters, Naval Facilities Engineering Command, 1972-1980.

Headed a combination law/business office which managed all of the Navy's contracting for construction, facilities maintenance, and architect-engineer services, with a major responsibility being to resolve disputes without litigation whenever possible. Command procedures called for all Contracting Officer Final Decisions, the legal prerequisite to litigation, to be issued by my office to assure that all avenues for non-litigative resolution were attempted. Cases could be committed to litigation, settled by negotiation, could be referred back to the field for negotiation, or could be resolved through the "Chief's Board" procedure, a minitrial in which senior executives of the Command (including myself or someone from my office, a senior Captain, and a Commander) and of the contractor heard a trial-type presentation of what had transpired, after which the executives attempted (usually successfully) to negotiate a resolution.

Assistant General Counsel for Civil Works, Office of the Chief of Engineers, Army, 1970-1972.

Legal advisor for the Corps's water resources development and operation programs and contracts under the Rivers and Harbors Act and similar legislation. Participated in negotiating agreements with state and local governmental agencies for the latter to operate and maintain Corps-built water resources. Analyzed and made recommendations concerning the resolution of problems arising out of the construction and dredging contracts awarded under the civil works program.

Assistant General Counsel for Policy and Regulations, Office of the Chief of Engineers, Army, 1968-1970.

Headquarters legal advisor to the Corps' military construction staff. Responsible for Corps contracting policies. Chaired Armed Services Procurement Regulation Committee Subcommittee on Construction. Addressed disputes arising out of the Corps' military construction contracts.

Counsel, Bellcomm, Inc. (an AT&T subsidiary), 1964-1968.

Sole staff counsel for this corporation which provided systems engineering—research and development—for NASA's Project Apollo. Handled all corporate legal matters except patents.

Captain, Procurement Law Division, Office of the Judge Advocate General, Army, 1961-1964.

Legal advisor to various Army headquarters and field offices on contract-related matters. Represented Army on various supply and services contracting subcommittees of the Armed Services Procurement Regulation Committee.

Law Clerk, Lamb, Blake, Hutchinson, & Dunne, Jersey City, N.J., Summers of 1959-1961.

New Jersey then-mandatory pre-admission nine-month legal clerkship. Firm specialized in defending negligence (railroad, automobile, general), medical malpractice, and workmen's compensation litigation, all on behalf of liability insurance carriers, and in probate and trust administration.

OTHER EXPERIENCE AND MEMBERSHIPS

Dispute Review Board Foundation, Member.

Completed the Foundation's DRB Chairing Training Program.

American Bar Association, Member (1961-2007).

Section of Dispute Resolution, Member; Vice-Chairman, Government Contracts Committee, 1999-2001. Organized and was panelist in several programs for ABA Annual and Mid-Year Conferences"

1997: San Francisco ABA Convention: *Mediation: The "Sleeping Giant"*;

2000: San Francisco ABA Mid-Year Convention: *Mediation With the Federal Government – An Opportunity Not Without Risk*;

2001: Washington D.C. ABA Mid-Year Convention: *ADR in Practice: Dispute Review Boards Here and Overseas*

Bar Association of the District of Columbia, Government Contracts Committee. Vice-Chairman, 1966-1967; Chairman, 1967-1968.

Federal Bar Association, Government Contracts Committee. Vice-Chairman, 1966-1968.

BAR MEMBERSHIP

New Jersey (1961)

U.S. Supreme Court

U.S. Courts of Appeals: Third, D.C., and Federal Circuits

District of Columbia (1964)

U.S. Court of Federal Claims

U.S. Court of Military Appeals

EDUCATION

J.D., Boston College Law School, Newton, Massachusetts, 1961. Law Review. Academic scholarship.

A.B., St. Peter's College, Jersey City, New Jersey, 1958. Major in History and Political Science. Academic Scholarship.